184

Supreme Court, U.S.
FILED

101158 MAR 21 2011

OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

J D NETTLES

V.

THE CITY OF LEESBURG ET. AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is there a limit to the number of times that a complaint may be amended?

LIST OF PARTIES AND CORPORATE DISCLOSURE

All current parties appear in the caption of the case on the cover page. The City of Leesburg is not a publicly traded corporation.

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APPENDIX B The final order/opinion of the United States District from the Middle District of Florida issued by Judge Moody.
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APPENDIX D Affidavit signed by counsel and petitioner of understanding of meaning of amending complaint.

TABLE OF AUTHORITIES CITED

Arnold v. Bd. of Educ. of Escambia County, 880 F.2d 305, 309 (11th Cir.1989).
Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed. 2d 929, 550
John Longardi v. Lawrence E. Kiely 01-5367 SUPERIOR COURT OF MASSACHUSETTS, AT MIDDLESEX2003 Mass. Super. LEXIS 172 May 22, 2003, Decided June 4, 2003
Randall v Scott No. 09-12862 D.C. Docket No. 08-02910-CV-TCB-1 June 30, 2010

STATUTES AND RULES

Federal Rule of Civil Procedure Rules 8(a).
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USC TITLE 42 CHAPTER 21 SUBCHAPTER I
§1986
ACTION FOR NEGLECT TO PREVENT
Federal Declaratory
Judgments Act, Title 28 U.S.C. Part VI Chapter
151Sections 2201 and 2202
and Title 28 U.S.C. Part IV Chapter 85 Sections
1331 and 1343

IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

For cases from the Federal Courts: The final order/opinion from the United States District Court for Middle District of Florida in Appendix B and the final order/opinion from the United States Court of Appeals for the 11th Circuit in Appendix C to the petition.

JURISDICTION

The date on which the United States Court of Appeals for the 11th Circuit decided this case was December 22, 2010 located in Appendix C.

THE JURISDICTIN OF THIS COURT IS INVOKED UNDER 28 U.S.C.§ 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

FEDERAL RULE OF CIVIL PROCEDURE 8 (a)(2)

US CODE TITLE 42 CHAPTER 21 SUBCHAPTER I § 1983 CIVIL ACTION

FOR DEPRIVATION OF RIGHTS US CODE TITLE 42 CHAPTER 21 SUBCHAPTER I § 1985 PARAGRAPH 3

USC 42 CHAPTER 21 SUBCHAPTER I §1988 PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

USC TITLE 42 CHAPTER 21 SUBCHAPTER I §1986 ACTION FOR NEGLECT TO PREVENT

FEDERAL DECLARATORY JUDGMENTS ACT, TITLE 28 U.S.C. PART VI CHAPTER 151 SECTIONS 2201 and 2202

TITLE 28 U.S.C. Part IV CHAPTER 85 SECTIONS 1331 and 1343.

STATEMENT OF THE CASE

The facts of this case are as such, on December 2, 2005 the defendants all five officers of the Leesburg Police department including Officer Roman, Officer Mack and Officer Holtzclaw (the remaining 2 officers are unknown), stopped Mr. Nettles allegedly based upon a report that a person matching his description, and traveling in a vehicle matching the lime-green Mercedes which Mr. Nettles drives, had committed an aggravated Battery with a knife upon another individual. Based upon the recent and violent nature of the alleged occurrence, the multiple Leesburg officers who accosted the Defendant (Mr. Nettles) asserted their right to search Mr. Nettles for **weapons**. During the frisking procedure no contraband or weapons were found, but despite this, and the completion of a "contact" card, and with half a dozen officers present, Mr. Nettles asserts that he was required to empty his pockets. Even by the account of the Leesburg officers, after all this had occurred, they continued to ask Mr. Nettles if he had any contraband, and what else he had in his pocket, and he finally pulled out the cocaine for which he was arrested. Testimony suggests that there was a BOLO (be on the lookout for) report (two days earlier) that said there were two or three

black males in there twenties and thirties; that they were in a Mercedes of some color, variously identified as green, gold and silver aluminum. Because of previous arrests Mr. Nettles was on probation. He remained in prison until the courts overturned his arrest. The order dismissing the criminal case was not issued until October18, 2007 by this time Mr. Nettles had been incarcerated close to 2 years. Since his release from prison Mr. Nettles has been subject to systematic harassment. On September 3, 2008 Mr. Nettles was stopped and frisked at a local convenience store; Mr. Nettles filed a report with the internal affairs department of the Leesburg Police Department. The events of that day went as follows, per his written complaint "I went to Tyler Fast Food, a convenience store on Griffin road and made a food purchase and as I was exiting the store, I received a phone call, I picked up the phone and preceded towards my truck with food in hand, I was stopped by two officers one I believe to be Officer Scott Mack. I was stopped and frisked for no reason. I asked the officers repeatedly why I was stopped; they said I was loitering, when I actually was simply walking to my car."The outcome of that investigation is unknown. Mr. Nettles has been stopped several times since his exoneration and release from prison, on some occasions he received a verbal warning.

On other occasions he received written warnings, he had written warnings on July 22, 2008 for a dim tail light. on October 16, 2008 Mr. Nettles was issued a citation for an open container (in which he pled No Contest against advice of counsel) . Mr. Nettles received another warning on December 12, 2008 for an improper tint this is the lime green Mercedes he was stopped in December of 2005. Later in December of 2008 Mr. Nettles filed this law suit in state court, then in February of 2010 Mr.Nettles was stopped again by the Leesburg Police for a tag that was not fully illuminated, the defendants filed a motion for dismissal because the Pleadings/complaint could not be understood, state court gave plaintiff 20 days to amend the complaint the complaint was amended and in the interim the defendants removed file to federal court, and again filed a motion for dismissal because the complaint could not be understood or failed to state a cause of action, again appellant was given 20days to amend complaint specifically to comply with Rules 8(a) Rule 8 (a) reads (a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain :(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief. The 11th Circuit Court of Appeals set the case for oral arguments on September 17, 2010, However on September 15, 2010 Mrs. Berter Forsett mother to Appellants attorney suddenly died of congested heart failure. Attorney for Appellant applied to court for rescheduling of oral arguments, however that motion was denied The Appellant included in his brief the following proposed complaint.

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR LAKE COUNTY, FLORIDA- CIVIL DIVISION
J. D. Nettles Jr.)
V.)
City of Leesburg - Police Department,)
Chief of Police William Chrisman,)
Officer Scott Mack,)
Officer A. Roman,)
Officer Holtzclaw)
Civil No. 2008CA6045
AMENDED COMPLAINT FOR DAMAGES

Plaintiff, through the undersigned attorney being duly sworn, files this complaint for Wrongful Arrest and Detention, Negligence, and Intentional Infliction of Emotional Distress against the above named defendants and alleges

the following:

1. The Plaintiff, J. D. Nettles is a citizen of the United States of America and the State of Florida, address 2350 Harlem Ave. Apt G Leesburg, FL 34748.

2. The Defendant, the City of Leesburg; is a municipality and a political subdivision of the State of Florida, organized under the laws of Florida. It is responsible for the policies, procedures, and practices implemented through its various agencies, agents, departments, and employees, and for injury occasioned thereby. The defendants Chief William Chrisman, Scott Mack, Officer A. Roman, and Officer Holtzclaw are citizens of the state of Florida and are or were employed by the Leesburg Police Department located at 115 E. Magnolia Street, Leesburg, FL 54748.

3. The amount in controversy exceeds $15,000.00.

JURISDICTION STATEMENT

4. The court has jurisdiction based on the following federal codes.

US CODE TITLE 42 CHAPTER 21 SUBCHAPTER I § 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS[1]

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[1] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction

US CODE TITLE 42 CHAPTER 21
SUBCHAPTER I § 1985 PARAGRAPH 3
(3) Depriving persons of rights or privileges [2]

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thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[2] **3) Depriving persons of rights or privileges**
If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the
purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal
privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or
Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from

giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

[3] **(a) Applicability of statutory and common law**
The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by

the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964[42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its Discretion, may include expert fees as part of the attorney's fee.

PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

USC TITLE 42 CHAPTER 21 SUBCHAPTER I §1986[4]

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[4] Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has

ACTION FOR NEGLECT TO PREVENT
Plaintiff seeks a declaratory judgment pursuant to the Federal Declaratory Judgments Act, Title 8 U.S.C. Part VI Chapter 151Sections 2201[5] and 2202[6]

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accrued.

[5] (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

[6] Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have

and Title 28 U.S.C. Part IV Chapter 85 Sections 1331[7] and 1343[8]

STATEMENT OF CLAIM FOR RELIEF

5. WRONGFUL ARREST AND DETENTION

On December 2, 2005 Defendants violated the privacy and security of the Plaintiffs protected property under color of law by stopping the plaintiff (a 40+ year old black man with dred locks driving a lime green Mercedes) allegedly on a BOLO report(be on the look out for), which actually stated that there were two or three suspects and suspects where in their twenties, driving a green or gold or silver Mercedes year and model unknown therefore the stop of Mr. Nettles was without proper cause (wrongful) Mr. Nettles was searched for weapons the search did not

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been determined by such judgment.

[7] The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

[8] (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

provide any weapons and when the search turned up no weapon Mr. Nettles should have been let go however, the defendants continued to ask Mr. Nettles if he had any contraband. Therefore the searching of the plaintiff was illegal, which led to the illegal arrest (wrongful), Mr. Nettles was on probation at the time which means he was not allowed bail or bond and that led to the (illegal) detention and confinement of plaintiff. Plaintiff was incarcerated for 2 years as a result of the false arrest. Arrest was overturned on appeal, documentation attached.

6. NEGLIGENCE

Plaintiff files this suit for Negligence against the City of Leesburg and its Police Chief and the above named defendants. It is the duty of the Leesburg police department to protect and serve its citizens and the Leesburg Police Department has as its Motto: "Enhancing The Quality Of Life Within Our Community" it is the plaintiffs belief that the Leesburg police department breached that duty and undermined its own motto, when the officers stopped Mr. Nettles on December 2,2005 despite the fact that the BOLO report (which was never produced during discovery in the criminal case, therefore it is unknown if the report even existed at the time) was for a green, or gold or silver Mercedes with two or three 20 year olds, the defendants also breached that duty when they did not allow

Mr. Nettles to leave after they searched him for weapons (which was the pretext for the stop) and found none, it is plaintiffs belief that the officers breached this duty when they continued to ask Mr. Nettles if he had any contraband on his person, (instead of letting him go) it is the plaintiffs belief that defendants breached that duty by arresting him for possession of cocaine, (the officers could have made a decision not to arrest Mr. Nettles since it was clear that the cocaine was for recreational use and not distribution). The damages caused by the arrest (which is the actual and proximate cause of his damages) lead him to be incarcerated without bail or bond for 2 years which in turn caused his social security benefits to be terminated. It is the plaintiffs' belief that this all could have been avoided through proper training. A reasonable prudent person can distinguish a 40 year old man from a 20 year old, and a gold Mercedes from a lime-green one. This is in accordance with the policies or customs of Leesburg Police to search for violations of law and since this is their duty then the proper training should be implemented so that gross mistakes as these(depravation of liberty and property) are not made.

7. HARASSMENT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS Since the arrest was overturned on appeal, plaintiff has been subjected to systematic harassment, Mr. Nettles has been stopped systematically documentation of stops in July 2008, September 2008, October 2008 and December 2008 are attached. There is no documentation of the many other verbal warnings that were given. It is plaintiffs' belief that the systematic stopping of his vehicle numerous times since his vindication of his criminal charges amounts to harassment and an intentional infliction of emotional distress, the stops were random one for a taillight, one for tinting, which has been on the car for years and this was the first stop for tinting.

DEMAND FOR RELIEF SOUGHT

8. Plaintiff has suffered actual damages in excess of $13,200 as a result of losing his Social Security benefits as a direct result of the violation of his Constitutional rights under the Fourth and Fourteenth Amendments to be free from unlawful and unreasonable seizures of their private property Plaintiff has suffered emotional anguish and harm as a result of the violation of his Constitutional rights under the Fourth and Fourteenth Amendments to be free from unlawful and unreasonable seizures of their

private property, plaintiff had a 1999 Blazer which was confiscated and never returned. Plaintiff seeks punitive damages for the intentional violation of protected rights in the amount of $7,300,000., $100,000.00 for each day that plaintiff was confined unjustly from each Defendant plus reimbursement of social security benefits in the amount of $13,200.00. For a total of $36,500,000.00
WHEREFORE, plaintiff comes now with clean hands and pray the court grant him relief and prays for declaratory judgment and demands trial by jury, and demands payment of court costs attorney fees and any all other relief that the court deems necessary and proper. Motion for relief of judgment was filed with the United States Middle District of Florida on 3/15/2010, motion was denied because of lack of jurisdiction. Another motion for relief of judgment is pending. It should also be noted that approximately eighty documents in support of Mr. Nettles claims were attached to the initial complaint.

REASONS FOR GRANTING THE WRIT

Is there a limit to the number of times that a complaint may be amended?

This case presents a question of wording in a complaint, and whether a complaint should be dismissed because of the way it is worded rather than the actual merits of the case. In ***John Longardi v. Lawrence E. Kiely*** **01-5367 SUPERIOR COURT OF MASSACHUSETTS, AT MIDDLESEX** ***2003 Mass. Super. LEXIS 172*** **May 22, 2003, Decided June 4, 2003, Filed the court allowed the plaintiff to amend his complaint six separate times.** There was a miscommunication between counsel for the plaintiff and counsel for defense. During a motion hearing in state court on or about March 5, 2009 around 3:00 pm the following events happened after the judge (Judge Semento) left his chambers: Marcia V. Forsett asked Ms. Stephanie McCulloch " does he (the judge) mean he wants the complaint shorter?" in which Ms. McCulloh simply shrugged her shoulders. (as if to say I do not know.)[9]

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[9] See Appendix D

Since the case was filed in the United States District Court for the Middle district of Florida and while on Appeal in the 11th Circuit court of Appeals, *Randall v Scott* No. 09-12862 D.C. Docket No. 08-02910-CV-TCB-1 June 30, 2010, was decided which concluded that a heightened requirement for pleadings was not necessary.

"in an effort to eliminate nonmeritorious claims on the pleadings and to protect public officials from protracted litigation involving specious claims, we, and other courts . tightened the application of Rule 8 to § 1983 cases." Arnold v. Bd. of Educ. of Escambia County, 880 F.2d 305, 309 (11th Cir.1989). In its opinion the 11th circuit in the instant case stated that there is no evidence that the claims made by Mr. Nettles is frivolous or without merit and also stated "we are also mindful of the fact that the law regarding the requirements of Rule 8 of the Federal Rules of Civil Procedure in § 1983 cases was still evolving and unsettled at the time the parties filed their briefs in this Court."[10]. There is no case law or statute that states the number of times a complaint can be amended.

[10] See Appendix C

CONCLUSION

The petitioner respectfully requests that the Supreme Court of the United States grant review of this matter based on the following reasons: There was a misunderstanding between counsels as to how the complaint needed to be presented, because of unforeseen circumstances, (the sudden death of petitioners attorneys' mother) oral arguments in the 11th Circuit were not rescheduled as requested, which could have changed the outcome of the Appeal from the 11th Circuit, since commencing the action and during the appeal the requirements for a heighten pleading §1983 claims have been relaxed, and all of the information presented in the potential fourth amended complaint was attached to the initial complaint no new parties or theories/ causes of action have been added.

Respectfully Submitted,

Marcia V. Forsett
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(863)605-5359 phone
Attorney for petitioner
March 15, 2011

APPENDIX

A

United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

09-14327-HH
J. D. Nettles, Jr. v. City of Leesburg

Closed

Docket #: 09-14327-HH
Short Style: J. D. Nettles, Jr. v. City of Leesburg
Docket Date: 08/25/2009
Lead Case:
Agency:
Nature of Suit: Civil Rights: Other
Misc. Type:
Clerk: Jackson, Elora
Clerk Phone: (404) 335-6173

District Information

Docket #:	09-00180-CV-OC-10-GRJ	**Judge:**	Wm. Terrell Hodges
Dkt Date:	04/27/2009	**District:**	Florida-Middle
NOA Date:	08/21/2009	**Office:**	MFL-Ocala

Secondary Case Information

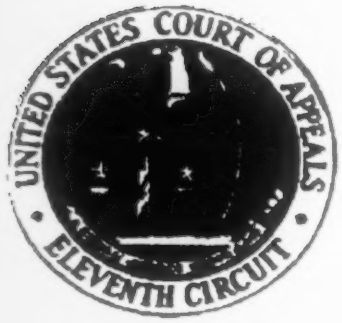
Docket #: **Judge:** Gary R. Jones
Dkt Date: / /

Case Relationships

Docket #	Short Style	Relation	Status

Pending Motions

No Pending Motions



United States Court of
Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

09-14327-HH
J. D. Nettles, Jr. v. City of Leesburg

J.D. NETTLES, JR.,

Plaintiff-Appellant,

versus

CITY OF LEESBURG - POLICE DEPARTMENT,

WILLIAM CHRISMAN,

Chief of Police,

SCOTT MACK,

Officer,

A. ROMAN,

Officer,

FNU HOLTZCLAW,

Officer,

Defendants-Appellees.

United States Court OF Appeals
FOR the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

09-14327-HH
J. D. Nettles, Jr. v. City of Leesburg

Appellant	Appellant Attorney
J. D. Nettles, Jr.	Marcia Vestylena

2350 HARLEM AVE APT G LEESBURG, FL 34748-3753 *Appellant Brief Filed filed on 01/28/2010* *Record Excerpts filed on 01/28/2010* *E-Brief Tendered: Appellant filed on 01/29/2010* *Reply Brief Filed filed on 03/12/2010* *E-Brief Tendered: Reply filed on 03/15/2010* *Fees: Paid on 12/22/2009*	**Forsett** The Forsett Law Office 11 ELKHORN DR FROSTPROOF, FL 33843-2448 (863) 605-5359 marciaforsett@msn.com *No Briefing Information Found.*

Appellee	Appellee Attorney
City of Leesburg - Police Department Address Not On File	**Stephanie Jo McCulloch** 1000 W Main St PO BOX 491357 LEESBURG, FL 34749-1357 (352) 787-1241 Fax: (352) 326-2608 *E-Brief Tendered: Appellee filed on 02/25/2010* *Appellee Brief Filed*

	filed on 02/26/2010
William Chrisman Address Not On File	**Stephanie Jo McCulloch** 1000 W Main St PO BOX 491357 LEESBURG, FL 34749-1357 (352) 787-1241 Fax: (352) 326-2608 *No Briefing Information Found.*
Scott Mack Address Not On File	**Stephanie Jo McCulloch** 1000 W Main St PO BOX 491357 LEESBURG, FL 34749-1357 (352) 787-1241 Fax: (352) 326-2608 *No Briefing Information Found.*
A. Roman Address Not On File	*No Briefing Information Found.*
FNU Holtzclaw Address Not On File	*No Briefing Information Found.*

United States Court of
Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

09-14327-HH
J. D. Nettles, Jr. v. City of Leesburg

	File Date	Entry	Party	Pending
	08/28/2009	DKT2 (Docketing Notice) issued. To:Marcia Vestylena Forsett; c:Sheryl L. Loesch; c:Stephanie Jo McCulloch		No
	08/28/2009	No Hearings to be Transcribed.		No
	08/28/2009	Probable Jurisdiction Noted:	J. D. Nettles, Jr.	No

	09/09/2009	E-CIP Filed.	Marcia Vestylena Forsett	No
	09/11/2009	Appearance Form Submitted.	Stephanie Jo McCulloch	No
	09/11/2009	Certificate of Interested Persons:	J. D. Nettles, Jr.	No
	09/11/2009	Civil Appeal Statement Form	J. D. Nettles, Jr.	No
	09/18/2009	DC Order: IFP Denied:	J. D. Nettles, Jr.	No
	09/28/2009	DKT6A (Letter re IFP denied by district court) issued. To:Marcia Vestylena Forsett; c:Sheryl L. Loesch; c:Stephanie Jo McCulloch		No
	09/28/2009	Motion to Proceed IFP:	J. D. Nettles,	No

			Jr.	
	09/30/2009	Certificate of Interested Persons: (Atty: Stephanie Jo McCulloch)	City of Leesburg - Police Department	No
	10/01/2009	CLK1 (Letter to district court) issued. To:Sheryl L. Loesch		No
	10/08/2009	Original Papers received: 1 Vols.		No
	12/15/2009	Motion to Proceed IFP is DENIED because the appeal is frivolous(JLE)		No
	12/15/2009	MOT2 (Notice of court action) issued. To:J. D. Nettles, Jr.; c:Marcia Vestylena Forsett; c:Sheryl L. Loesch		No
	12/15/2	REC3 (Letter		No

	009	returning record to district court) issued. To:Sheryl L. Loesch		
	12/29/2009	Briefing Notice Issued		No
	12/29/2009	BR1CIV (Letter confirming brief due date) issued. To:Marcia Vestylena Forsett; To:Stephanie Jo McCulloch		No
	12/29/2009	DC Docket Sheet Updated to show filing fee paid in district court, receipt #C-8071.		No
	01/08/2010	Appearance Form Submitted.	Marcia Vestylena Forsett	No
	01/28/2010	Appellant Brief Filed: (Atty: Marcia	J. D. Nettles, Jr.	No

		Vestylena Forsett)		
	01/28/2010	Record Excerpts: (Atty: Marcia Vestylena Forsett)	J. D. Nettles, Jr.	No
30pages	01/29/2010	E-Brief Tendered: Appellant by Marcia Vestylena Forsett	J. D. Nettles, Jr.	No
29pages	02/25/2010	E-Brief Tendered: Appellee by Stephanie Jo McCulloch	City of Leesburg - Police Department	No
	02/26/2010	Motion for Sanctions (Rule 38): (Atty: Stephanie Jo McCulloch)	City of Leesburg - Police Department	No
	02/26/2010	Appellee Brief Filed: (Atty: Stephanie Jo McCulloch)	City of Leesburg - Police Department	No
	03/04/2	Certificate of		No

	010	Readiness		
	03/04/2010	Record on Appeal		No
	03/12/2010	Reply Brief Filed: M: 03/24 PT'D No date for proof on service (Atty: Marcia Vestylena Forsett)	J. D. Nettles, Jr.	No
	03/15/2010	BR7 (Brief deficiency letter) issued. To:Marcia Vestylena Forsett; c:Stephanie Jo McCulloch		No
21pages	03/15/2010	E-Brief Tendered: Reply by Marcia Vestylena Forsett	J. D. Nettles, Jr.	No
	03/16/2010	Response to Motion for Sanctions: (Atty: Marcia Vestylena	J. D. Nettles, Jr.	No

		Forsett)		
	03/17/2010	MOT2 (Notice of court action) issued. To:Marcia Vestylena Forsett; c:Stephanie Jo McCulloch		No
	04/22/2010	Appellees' motion for sanctions pursuant to FRAP 38 is CARRIED WITH THE CASE. (JLE/SFB/JCH)		No
	04/22/2010	MOT2 (Notice of court action) issued. To:Marcia Vestylena Forsett; To:Stephanie Jo McCulloch		No
	07/21/2010	Appellees' Motion for Sanctions		No

		pursuant to FRAP 38 continues to be CARRIED WITH THE CASE. (By clerk, John Ley)		
	07/21/2010	MOT2 (Notice of court action) issued. c:Marcia Vestylena Forsett; c:Stephanie Jo McCulloch		No
	09/15/2010	Attorney Changed for: Scott Mack From: To: McCulloch, Stephanie Jo.	Scott Mack	No
	09/15/2010	Attorney Changed for: William Chrisman From: To: McCulloch, Stephanie Jo.	William Chrisman	No
	09/15/2010	Appellant's Emergency		No

		Motion for Continuance is DENIED. But the case is removed from the oral argument calendar. The case will be either decided on the briefs without OA or rescheduled later for OA as the needs of the court and the case may require.JLE		
	09/15/2010	MOT2 (Notice of court action) issued. To:Marcia Vestylena Forsett; c:Stephanie Jo McCulloch		No
	09/15/2010	Appellant's Emergency Motion for Continuance:	J. D. Nettles, Jr.	No

		(Atty: Marcia Vestylena Forsett)		
	09/17/2010	Oral Argument Scheduled: 09/17/10 - Case removed from the calendar per 09/15/10 order. Read 9/15/10 order.		No
	09/17/2010	Case Submitted without Argument		No
	10/01/2010	Appellant's Motion to add case to oral argument calendar (Atty: Marcia Vestylena Forsett)	J. D. Nettles, Jr.	No
	10/05/2010	Appellee's Response to Aplt's Motion to add case to the OA calendar: (Atty: Stephanie Jo McCulloch)	City of Leesburg - Police Department	No

	12/22/2010	Appellant's Motion to add case to oral argument calendar (Atty: Marcia Vestylena Forsett) is DENIED. JLE.		No
	12/22/2010	Motion for Sanctions (Rule 38): (Atty: Stephanie Jo McCulloch) is DENIED. JLE/JCH/ALARCON. (See opinion).		No
	12/22/2010	Judgment Entered		No
	12/22/2010	OPIN1A (Notice of issuance of opinion) issued. costs on appeal taxed against plaintiff-appellant. c:Jones, Gary R.; c:Marcia		No

		Vestylena Forsett; c:Stephanie Jo McCulloch; c:Wm. Terrell Hodges		
	12/22/2010	Opinion Issued		No
	01/05/2011	Bill of Costs Filed: Costs Awarded to Appellees: (Atty: Stephanie Jo McCulloch)	City of Leesburg - Police Department	No
	01/21/2011	CASE CLOSED-Mandate Issued		No
	01/21/2011	Mandate Issued		No
	01/21/2011	MDT1 (Letter issuing mandate) issued. To:Sheryl L. Loesch; c:Marcia Vestylena Forsett; c:Stephanie Jo		No

		McCulloch		
	01/24/2011	REC3 (Letter returning record to district court) issued. To:Sheryl L. Loesch		No
	01/24/2011	Record and Exhibits Returned to District Court: 1 v. of ROA.		No

APPENDIX

B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

J. D. NETTLES JR.,
Plaintiff,
-vs- Case No. 5:09-cv-180-Oc-10GRJ
CITY OF LEESBURG, as City of Leesburg Police Department, SCOTT MACK, and WILLIAM CHRISMAN,
Defendants.
_____/

ORDER

On December 22, 2008, the Plaintiff, who is represented by counsel, filed a complaint in state court. (Doc. 7-2). Following dismissal of the complaint on the Defendants' motion (Doc. 7-3), the Plaintiff filed an amended complaint on March 20, 2009. (Id.). The Defendants removed the case to this Court on April 27, 2009 based upon federal question jurisdiction - specifically the Plaintiff's citation of 42 U.S.C. § 1983 (Doc. 1). At the time of removal, the Defendants had a pending motion to dismiss the amended complaint, which they supplemented on May 7, 2009 (Docs. 3, 8).

On June 3, 2009, the Court granted the motion to dismiss, finding that the amended complaint did not comply with Federal Rules of Civil Procedure 8(a) or 10(b), and gave the

Plaintiff twenty (20) days to file a second amended complaint that complied with the Federal Rules (Doc. 14). On June 22, 2009, the Plaintiff filed his Second Amended Complaint (Doc. 15), and four days later, the Defendants filed their motion to dismiss (Doc.
Case 5:09-cv-00180-WTH-GRJ Document 17 Filed 07/22/09 Page 1 of 3 PageID 284
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16). A review of the Second Amended Complaint demonstrates that it still falls short of the requirements of Rules 8(a) and 10(b). Other than removing several paragraphs, the Second Amended Complaint is a verbatim recitation of the prior amended complaint, and does not provide any guidance as to the legal theories upon which relief is sought, nor the factual basis for any of his requests for relief. The Plaintiff has now been given three opportunities to file a complaint which complies with the applicable pleading rules. In each instance, the Plaintiff has submitted almost an identical document with no attempt to correct any deficiencies. Providing any further chances to amend would therefore be futile and a waste of attorney and Court resources.

See Dismuke v. University of South Fla. Bd. of Trustees, No. 8:05-CV-340-T-17-TBM, 2006 WL 166547 (M.D. Fla. Jan. 23, 2006); Levine v. Bellsouth Corp., 302 F. Supp. 2d 1358, 1360 (S.D. Fla. 2004). Moreover, the Plaintiff has failed to respond to the Defendants' latest motion to dismiss, which the Court interprets as acquiescence in dismissal of this case.

Accordingly, upon due consideration, the Defendants' Motion to Dismiss Plaintiff's (Second) Amended Complaint (Doc. 16) is GRANTED. The Clerk is directed to enter judgment dismissing this case with prejudice, terminate all pending motions, and close the file.

IT IS SO ORDERED.

Case 5:09-cv-00180-WTH-GRJ Document 17 Filed 07/22/09 Page 2 of 3 PageID 285

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DONE and ORDERED at Ocala, Florida this 22nd day of July, 2009.

Copies to: Counsel of Record

APPENDIX

C

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-14327

D.C. Docket No. 09-00180-CV-OC-GRJ
J.D. NETTLES, JR.,
Plaintiff-Appellant,
versus
CITY OF LEESBURG - POLICE DEPARTMENT,
WILLIAM CHRISMAN, Chief of Police,
SCOTT MACK, Officer,
A ROMAN, Officer,
FNU HOLTZCLAW, Officer,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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(December 22, 2010)
Before EDMONDSON, HILL and ALARCÓN,*
Circuit Judges.
*Honorable Arthur L. Alarcón, United States Circuit Judge for the Ninth Circuit, sitting by designation.
ALARCÓN, Circuit Judge:
J.D. Nettles Jr. appeals from the order of the

District Court for the Middle District of Florida dismissing with prejudice his Second Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and for failure to comply with Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. The City of Leesburg, William Chrisman, and Scott Mack ("Appellees") have filed a motion for sanctions against Nettles under Rule 38 of the Federal Rules of Appellate Procedure for filing a frivolous appeal. We affirm the dismissal of this action because we conclude that Nettles failed to state a claim upon which relief could be granted. We also deny the motion for sanctions filed by Appellees because we are not persuaded that Nettles's appeal was clearly frivolous.

On December 22, 2008, Nettles filed a Complaint against the Appellees in the Fifth Judicial Circuit in and for Lake County, Florida, pursuant to 42 U.S.C.§ 1983, the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760.01, et. seq., and Fla. Stat. § 768.01 et. seq. On January 20, 2009, Appellees filed a motion to dismiss this action pursuant to Rules 1.140 and 1.110(b) of the Florida Rules of Civil Procedure. Appellees asserted in their motion that:

[t]he Complaint fails to state a claim upon which relief can be granted under any of the legal "theories" or conclusory statements of law listed by the Plaintiff in the indecipherable Complaint. In addition to containing nothing more than conclusory allegations, there are insufficient allegations pled to give this Court jurisdiction over the Defendants, or over the alleged claims. There is no basis for State Court jurisdiction under 42 U.S.C. § 1983; proper jurisdiction for such claims is Federal Court. (District Court's Dkt. No. 1 at 17). On March 9, 2009, the state court dismissed Nettles's Complaint for failure to state a cause of action and gave Nettles 20 days to file an Amended Complaint. On March 20, 2009, Nettles filed an amended complaint. The Amended Complaint alleges as follows:

6. On December 2, 2005 Defendants violated the privacy and security of the Plaintiffs protected property under color of law by searching the plaintiff illegally, which led to the illegal arrest, which led to the illegal detention and confinement of plaintiff. Plaintiff was incarcerated for 2 years as a result of the false arrest. Arrest was overturned on appeal, document attached. Since the arrest was overturned on appeal, plaintiff has been subjected to systematic harassment.

See attached complaint filed by Plaintiff. This is in accordance [with] the policies or customs of Leesburg Police to search for violations of law.
7. Failure to train and supervise- Defendants, Leesburg Police Department knows to a moral certainty that the individual Defendants will, in the course of official duties come in contact with the general public, and will have opportunity for the use and miss-use of his official office as it relates to the arrest requirements of the Fourth Amendment.
8. Defendant, Leesburg Police Department has a moral and legal responsibility to train and supervise said Defendants in the proper performance of his duties for the protection of the Constitutional rights of the citizens with whom he may come in contact, and has failed to do so. Defendant, Leesburg Police Department has displayed gross indifference to the Constitutional rights of the plaintiff and others in failing to properly train and supervise Defendant officers, with indifference and inaction has led to the violation of the Plaintiff's Constitutional rights and caused other damages.
9. It is likely that proper training and supervision could have prevented the violation of the Plaintiffs protected rights, and that proper training and supervision in the future could prevent further similar violations.

10. Intentional infliction of emotional distress, Plaintiff has suffered emotional anguish and harm as a result of the violation of his Constitutional rights under the Fourth and Fourteenth Amendments to be free from unlawful and unreasonable searches. Plaintiff has and still is being harassed by the defendants and officers of the Leesburg Police Department see attached notarized statement of complaint made to Leesburg Police Department. 11. Plaintiff is entitled to compensation under 42 U.S.C. 1983 and "The Florida Civil Rights Act of 1992" and FL Stat title XLV Chapter 768 Negligence for the damages suffered as a result of the violation of his federally protected rights. (Amended Complaint at 1-2). On April 27, 2009, Appellees removed the case to the United States District Court for the Middle District of Florida. Because Appellees' motion to dismiss Nettles's Amended Complaint was pending in the state court at the time of removal, Appellees filed a memorandum of law, citing Rule 12(b)(6) of the Federal Rules of Civil Procedure, in support of their motion to dismiss the Amended Complaint in the District Court on May 7, 2009. Appellees argued that [t]he allegations contained in the Amended Complaint are vague and conclusory, and render it difficult, if not impossible to determine what claims Plaintiff is attempting to plead.

The Amended Complaint as drafted makes it particularly difficult to determine what claims arebeing alleged against the Individual Defendants. [] The Amended Complaint as drafted makes it impossible for any Defendant to appropriately respond to the allegations raised. (District Court's Dkt. No. 8 at 2). On June 2, 2009, Nettles filed a response to Appellees' motion to dismiss the Amended Complaint.1 In it, Nettles maintained that "the very first paragraph of the Amended Complaint contains the causes of actions." The first paragraph reads as follows: "Plaintiff, through the undersigned attorney being duly sworn files this complaint for Wrongful Arrest and Detention, Negligence, and Intentional Infliction of emotional distress." On June 3, 2009, the District Court granted Appellees' motion to dismiss Nettles's Amended Complaint. It ruled that "the amended complaint did not comply with Federal 1On the same date, Nettles filed a motion for summary judgment. He asserted that Appellees failed to dispute "any of the facts in this case in their responses" to Nettles's Amended Complaint. On June 3, 2009, the District Court denied Nettles's motion for summary judgment as premature. The District Court explained that Appellees "have not yet been required to file an answer to [Nettles's]

Complaint or Amended Complaint, and therefore it is not possible at this time to determine what facts, if any, are in dispute. See Fed. R. Civ. 12(a)(4), (b)." Rules of Civil Procedure 8(a) or 10(b)."2 The District Court gave Nettles 20 days to file a Second Amended Complaint. On June 22, 2009, Nettles filed a Second Amended Complaint. The Second Amended Complaint alleges that On December 2, 2005 [Appellees] violated the privacy and security of Plaintiff's protected property under color of law by searching the plaintiff illegally, which led to the illegal arrest, which led to the illegal detention and confinement of plaintiff. Plaintiff was incarcerated for 2 years as a result of the false arrest. Arrest was overturned on appeal, document attached. Since the arrest was overturned on appeal, plaintiff has been subjected to systematic harassment. See attached complaint filed by Plaintiff. This is in accordance [with] the policies or customs of Leesburg Police to search for violations of law. (Second Amended Complaint at 5). On June 26, 2009, Appellees filed a motion to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6) in which they argued that [t]he Second Amended Complaint is practically identical to the original Complaint and contains the same pleadings deficiencies.

The Second Amended Complaint as a whole is nothing more than a hodgepodge of purported statements of law and conclusory allegations. The Second Amended Complaint contains insufficient factual allegations to state a claim under any theory. 2Rule 12(a)(4) provides that the requirement in Rule 12(a)(1)(A) that a defendant must serve an answer within 21 days after being served with the summons and complaint is altered if a 12(b)(6) motion is filed. Rule 12(b)(6) provides that a party may assert the "failure to state a claim upon which relief can be granted" by motion. (District Court's Dkt. No. 16 at 1). Nettles did not file a response to the motion to dismiss his Second Amended Complaint. On July 22, 2009, the District Court dismissed Nettles's Second Amended Complaint with prejudice. It reasoned as follows:

A review of the Second Amended Complaint demonstrates that it still falls short of the requirements of Rules 8(a) and 10(b). Other than removing several paragraphs, the Second Amended Complaint is a verbatim recitation of the prior amended complaint, and does not provide any guidance as to the legal theories upon which relief is sought, *nor the factual basis for any of his requests for relief.* (emphasis added).

The district court also stated:

[Nettles] has now been given three opportunities to file a complaint which complies with the applicable pleading rules
In each instance, the plaintiff has submitted almost an identical document with no attempt to correct any deficiencies. Providing any further chances to amend would therefore be futile and a waste of attorney and Court resources . . . .
Moreover, [Nettles] has failed to respond to the [appellees'] latest motion to dismiss, which the Court interprets as acquiescence in dismissal of this case. (District Court's order of July 22, 2009 at 2). Nettles did not file a motion for reconsideration of the order dismissing the Second Amended Complaint, nor did
he request that the dismissal should be without prejudice. Nettles filed a timely notice of appeal. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291. II A
Nettles contends that the District Court erred in dismissing his Second Amended Complaint for failure to state sufficient facts to state a cause of action because "a person of average intelligence can understand the pleadings that the [district court] rejected." (Appellant's Br. at 15).

Nettles argues that [he] deserves his day in court and deserves civil damages in accordance with the injuries he sustained [for] wrongful arrest, illegal detention, negligence, and intentional infliction of emotional distress he sustained from the [appellees] simply because [he] has a criminal background does not forfeit his civil rights and his redress of injuries. (Id at 15-16). Nettles asserts that "[t]o dismiss a complaint because of the wording of the complaint is tantamount to a mere gesture of due process. In order to afford [him] with at least a measure of fundamental fairness he deserves an opportunity to be heard." (Id. at 19). "We review a district court order granting a motion to dismiss *de novo*, applying the same standard as the district court." *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010) (citing *Hoffman-Pugh v. Ramsey*, 312 F.3d 1222, 1225 (11thCir. 2002)). "We therefore accept as true the facts as set forth in the complaint and draw all reasonable inferences in the plaintiff's favor." *Id.* (citing *Wilson v. Strong*, 156 F.3d 1131, 1133 (11th Cir. 1998)). "Generally, under the Federal Rules of Civil Procedure, a complaint need only contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Id.* (citing Fed.R.Civ.P. 8(a)(2)).

"To survive a 12(b)(6) motion to dismiss, the complaint 'does not need detailed factual allegations,' *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), but must'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In *Twombly*, the Supreme Court explained that Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . .claim is and the grounds upon which it rests," *Conley v. Gibson*, 355U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ibid.; *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, *see Papasan v.Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation").

Factual allegations must be enough to raise a right to relief above the speculative level, *see* 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed. 2004) [] ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on [the assumption that all the] allegations in the complaint are true (even if doubtful in fact) . . . *Twombly,* 550 U.S. at 555 (footnote omitted).

Appellees contend in their responsive brief that the District Court did not err in dismissing the Second Amended Complaint with prejudice because Nettles failed to meet "the heightened pleading requirements under the Eleventh Circuit under 42 U.S.C. § 1983 . . . ." (Appellees' Br. at 5). However, as this Court explained in *Randall,* a heightened pleading standard for § 1983 cases involving qualified immunity was overruled by the Supreme Court in *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). *Randall*, 610 F.3d at 705.3 In *Randall*, this Court explained:

Over two decades ago, "in an effort to eliminate nonmeritorious claims on the pleadings and to protect public officials from protracted litigation involving specious claims, we, and other courts . . .tightened the application of Rule 8 to § 1983 cases."

Arnold v. Bd. Of Educ. of Escambia County, 880 F.2d 305, 309 (11th Cir. 1989). Under this heightened pleading standard, plaintiffs were required to provide "some factual detail" in addition to plain statements showing that they were entitled to relief. *Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485 (11th Cir. 1992). We found such additional factual detail useful in § 1983 cases in order to make qualified immunity determinations at the motion to dismiss stage and to prevent public officials from enduring unnecessary discovery. Appellees' responsive brief in this appeal was filed on February 26, 2010. *Randall* was decided by this Court on June 30, 2010. Thus, the District Court was required to follow the law of this Circuit that imposed a heightened pleading standard when it dismissed this action for failure to comply with Rule 8(a)(2) on July 22, 2009. *See McGinley v. Houston*, 361 F.3d 1328 (11th Cir. 2004) (under the principle of *stare decisis*, "[a] circuit court's decision binds the district courts sitting within its jurisdiction while a decision by the Supreme Court binds all circuit and district courts."). *Id.* However, "[a]fter *Iqbal* it is clear that there is no 'heightened pleading standard' as it relates to cases governed by Rule 8(a)(2), including civil rights complaints." *Id.* at 710.

Therefore, this Court must reject Appellees' argument that we must apply a heightened pleading standard in reviewing the merits of Nettles's contentions. The Supreme Court explained in *Iqbal* that the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, thedefendant- unlawfully-harmed-me accusation. [*Twombly,* 550 U.S.] at 555 [] (citing *Papasan*[,] 478 U.S. [at] 286, [] (1986)). A pleading that offers 'labels and conclusions" or "formulaic recitation of the elements of a cause of action will not do." [*Twombly,*] at 555 []. Nor does a complaint suffice if it tenders "naked assertion[s]' devoid of 'further factual enhancement." *Id.*, 557 []. *Iqbal*, 129 S.Ct. at 1949. Nettles's Second Amended Complaint alleges that Appellees are responsible for injuries he sustained because they "violated the privacy and security of Plaintiff's protected property under color of law by searching the plaintiff illegally, which led to the illegal arrest, which led to the illegal detention and confinement of plaintiff." Nettles failed to allege facts that supported his legal contentions that he was illegally searched and falsely arrested, as well as illegallydetained and confined.

The District Court did not err in dismissing the Second Amended Complaint because Nettles failed to "provide any guidance as to the legal theories upon which relief is sought, nor the factual basis for any of his requests for relief." (District Court's Order of July 22, 2009 at 2).

B

Nettles also claims that the City of Leesburg Police Department is liable for failing to "train and supervise" the individual defendants. "[T]o sustain a 1983 action, a plaintiff must make a prima facie showing that the act or omission of a person acting under color of state law deprived plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States." *Cannon v. Taylor,* 782 F.2d 947, 949 (11th Cir. 1986) (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)). "Although the Supreme Court has held that counties (and other local government entities) are "persons" within the scope of § 1983, and subject to liability, [appellant] cannot rely upon the theory of *respondeat superior* to hold [a government entity] liable." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir.2004) (citing *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658,690 (1978)).

"'It is only when the 'execution of the government's policy or custom inflicts the injury' that the municipality may be held liable.'" *Id.* (citing *City of Canton v. Harris*, 489 U.S. 378, 385 (1989)). "A [city] does not incur § 1983 liability for injuries caused solely by its employees." *Id.* (citing *Monell*, 436 U.S. at 694). "Nor does the fact that a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee infer municipal culpability." *Id.* (citing *Bd. of County Com'rs v. Brown*, 520 U.S. 397, 403 (1997)). "Instead, to impose § 1983 liability on a municipality, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *Id.* (citing *Canton*, 489 U.S. at 388). Nettles's Second Amended Complaint does not allege sufficient "factual content that allows the court to draw the reasonable inference" that the City of Leesburg Police Department is liable for any misconduct under § 1983. *Iqbal*, 129 S.Ct. at 1949. Nettles's legal conclusions of § 1983 liability by any of the Appellees are not supported by factual allegations.

III

Nettles's Second Amended Complaint also alleges state law claims for negligence and intentional infliction of emotional distress. "[T]o state a claim for negligence under Florida law, a plaintiff must allege that the [Appellees] owed the plaintiff a duty of care, that [Appellees] breached that duty, and that the breach caused plaintiff to suffer damages." *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1262 (11th Cir. 2001). To state a claim for intentional infliction of emotional distress, a plaintiff must show: "(1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe." *Hart v. United States*, 894 F.2d 1539, 1548 (11th Cir. 1990). Nettles's Second Amended Complaint lacks any factual allegations to support his claim for negligence or intentional infliction of emotional distress. The state law claims alleged in his Second Amended Complaint contain solely legal conclusions. They do not comply with the pleading requirements set forth in *Iqbal*. The District Court did not err in concluding that Nettles failed to allege sufficient facts regarding his state law claims upon which relief could be granted.

IV

Appellees filed a motion for sanctions against Nettles in this Court pursuant to Rule 38 of the Federal Rules of Appellate Procedure for filing this appeal. In their Rule 38 motion, Appellees argue that the "[b]rief filed by Nettles in the instant case is frivolous in nature and sets forth no logical or legal basis for relief from the District Court's Judgment." (Appellees' motion for sanctions at 8).

Rule 38 provides that: "[i]f a court of appeals determines that an appeal is frivolous, it may, *after separately filed motion* or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38 (emphasis added). "'Rule 38 sanctions have been imposed against appellants who raise 'clearly frivolous claims' in the face of established law and clear facts.'" *Farese v. Scherer*, 342 F.3d 1223, 1232 (11th Cir. 2003) (quoting *Misabec Mercantile, Inc. de Panama v. Donaldson, Lufkin & Jenrette ACLI Futures, Inc.*, 853 F.2d 834, 841 (11th Cir. 1988)). For purposes of Rule 38 sanctions, a claim is frivolous if it is "utterly devoid of merit." *Bonfiglio v. Nugent*, 986 F.2d 1391, 1393 (11th Cir. 1993).

As discussed above, we have concluded that the District Court did not err in determining that Nettles's counsel failed to comply with the requirements for pleading claims upon which relief can be granted pursuant to Rule 12(b)(6). However, we are also mindful of the fact that the law regarding the requirements of Rule 8 of the Federal Rules of Civil Procedure in § 1983 cases was still evolving and unsettled at the time the parties filed their briefs in this Court. Prior to June 30, 2010, "in an effort to eliminate nonmeritorious claims on the pleadings and to protect public officials from protracted litigation involving specious claims, we, and other courts . . . tightened the application of Rule 8 to § 1983 cases." *Randall*, 610 F.3d at 705 (quoting *Arnold*, 880 F.2d at 309). "Under this heightened pleading standard, plaintiffs were required to provide 'some factual detail' in addition to plain statements showing that they were entitled to relief." *Id.* (quoting *Oladeinde*, 963 F.2d at 1485). In their motion for Rule 38 sanctions, Appellees relied, in part, on a heightened pleading standard that is no longer good law.

While we have determined that Nettles has failed to demonstrate that he pled sufficient facts to state a claim upon which relief can be granted, pursuant to *Iqbal* and *Randall*, we are not persuaded that his appeal is clearly frivolous in light of this Circuit's recent rejection of the heightened pleading standard. On the date it ordered the dismissal of this action for failure to state a claim upon which relief could be granted, the District Court was required to determine whether the Second Amended Complaint met a heightened pleading standard. As this Court explained in *Randall*, after the notice of appeal was filed, adherence to that standard is erroneous.4 4As noted above, after Appellees filed their motion for Rule 38 sanctions, this Court held that the heightened pleading standard was no longer good law. We regret that counsel for Appellees failed to file a letter pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure notifying us that, in dismissing Nettles's Second Amended Complaint, the District Court applied a heightened pleading standard that was subsequently rejected by this Court.

Assuming that Appellees failed to advise this Court that they had cited precedent in their responsive brief that had been overruled because they failed to discover this in preparing for oral argument, this omission has caused this Court to expend precious time and effort to learn that at least some of Appellees' legal contentions are contrary to the law of this Circuit.

16

CONCLUSION

The District Court did not err in dismissing this action with prejudice. Nettles was given three opportunities to file a complaint that complied with the applicable pleading requirements of Rule 8. His amendments failed to correct the deficiencies in his Complaint. Nettles's Second Amended Complaint does not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 129 S.Ct. at 1949. Furthermore, Nettles did not respond to the Appellees' last motion to dismiss nor did he object to the District Court's dismissal. Nettles did not file a motion for reconsideration nor did he request leave from the District Court to amend his Complaint.

This Court has held that a "district court is not required to grant a plaintiff leave to amend his complaint *sua sponte* when the plaintiff, who is represented by counsel, never filed a motion to amend nor requested leave to amend before the district court." *Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002). We AFFIRM the District Court's judgment and DENY Appellees' motion
for sanctions.

APPENDIX

D

UNITED STATES COURTOF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NUMBER 09-14327-H

J D NETTLES JR.

Plaintiff-Appellant,

VS.

CITY OF LEESBURG, et al

Defendants

AFFIDAVIT OF APPELLANT AND APPELLANTS' ATTORNEY

The appellant and appellants attorney do hereby swear/ or affirm under penalty of perjury that during a hearing with the attorney for the City of Leesburg (on or about March 5, 2009 around 3:00 pm) the following events happened after the judge (Judge Semento) left his chambers: Marcia V. Forsett asked Ms. Stephanie McCulloch " does he (the judge) mean he wants the complaint shorter?" in which Ms. Mcculloh simply shrugged her shoulders. (as if to say I do not know.)

J D Nettles

Marcia V. Forsett Esq. 03/11/10

E OF FLORIDA
UNTY OF POLK
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 11th DAY OF March, 20 10
NOTARY PUBLIC
MY COMMISSION EXPIRES 02/17/13